IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY THIRD DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 8484 of 1995

Between:

1 Smt.Lakavat Lokeswari, W/o.late Lakavat Ramulu
Suryapet, Nalgonda Dist.
2 Lakavat Vamsikrishna, S/o.late Lakavat Ramulu
Minor, represented by Smt.L.Lokeswari (petitioner - 1)
3 Lakavat Chandya S/o.Jageena
Maneswaram Village,
Tungathurthi Mandal, Nalgonda Dist.
4 Lakavat Mindi, W/o.Lakavat Chandya
Maneswaram Village,
Tungathurthi Mandal, Nalgonda Dist. **.... PETITIONERS**

AND

1 Andhra Pradesh State Electricity Board rep.by its Chairman
Vidyut Soudha, Somajiguda, Hyderabad.
2 The Superintending Engineer, A.P.S.E.B.,
Nalgonda.
3 The Divisional Electrical Engineer, A.P.S.E.B.,
Suryapet, Nalgonda Dist,
4 The Asst. Engineer, A.P.S.E.B.,
Suryapet, Nalgonda Dist
5 Santaiah, Helper, A.P.S.E.B
Suryapet, Nalgonda Dist

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring that the respondents are liable to pay a compensation of Rs.5,00,000/- to the petitioners herein for the death of late Sri L.Ramulu which was caused due to the negligent action of the 5th respondent herein and it may be further directed the respondents to pay a sum of Rs.5,00,000/- to the petitioners herein

towards compensation for the death of Sri L.Ramulu and pass such other order.

Counsel for the Petitioners:MR.Y.Rama Rao

Counsel for the Respondents: Standing Counsel for APSEB

The Court Made the Following :

ORDER:

The four petitioners herein are the legal heirs and dependents of one L.Ramulu. Petitioners 3 and 4 are father and mother of late Ramulu, and first petitioner is his wife. Minor son of Ramulu is second petitioner and is represented by his mother, first petitioner herein. They seek a Writ of Mandamus declaring that the respondents herein, namely, Andhra Pradesh State Electricity Board (APSEB) and its officials are liable to pay compensation of Rs.5,00,000/- to the petitioners herein for the death of late Ramulu due to electrocution allegedly due to negligence of fifth respondent, who is helper working in APSEB.

The case of the petitioners is that Ramulu, who was working as Conductor in Andhra Pradesh State Road Transport Corporation (APSRTC) and drawing, at the relevant time, a sum of Rs.2,429.10 ps, died in a freak accident by coming into contact with a live electrical wire in the house of Ramulu on 15.11.1994. It is, however, not necessary to refer as to how the accident occurred having regard to the order that is to be passed. The only contention of the petitioners is that Ramulu died due to negligence of the fifth respondent in rectifying service wire at the house of the petitioners.

This Court admitted the Writ Petition on 26.4.1995 and ordered *rule nisi*. Though *rule nisi* was served on the respondents some time in 1995, no counter affidavit is filed. Be that as it is, in a case of this nature, the factual matrix, however, graphically it is given in the affidavit, cannot be accepted by this Court. It is always a question of disputed fact as to whether fifth respondent was negligible or deceased is guilty of contributory negligence in coming into contact with the live electrical wire in spite of the fact that first petitioner, who is deponent of the supporting affidavit knew very well that the wire was emitting shock. Be that as it is, unless and until after regular trial, a Court of Law holds that Ramulu died of electrocution due to negligence of the respondents, no compensation can be awarded, much less in the proceedings under Article 226 of the Constitution of India.

It is well settled by reason of reason of decisions of the Supreme Court in **Chairman, Grid Corporation of Orissa Ltd. v. Sukamani Das** and **Tamil Nadu Electricity Board v. Sumathi**, that in exercise of powers under Article 226 of the Constitution of India, ordinarily, this Court would not award compensation for the death of a person due to electrocution. Such person has to approach Civil Court and agitate his/her rights. However, if there is any policy or scheme implemented by the respondents for

awarding *exgratia,* the same shall have to be considered.

In **Tamil Nadu Electricity Board v. Sumathi** (supra), after referring to **Chairman, Grid Corporation of Orissa Ltd. v. Sukamani Das** (supra), and the other case law, the Supreme Court ruled as under:

In view of the clear proposition of law laid by this Court in **Sukamani Das case** (supra) when disputed question of fact arises and there is clear denial of any tortuous liability, remedy under Article 226 of the Constitution may not be proper. However, it cannot be understood as laying a law that in every case of tortuous liability recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there, it cannot be said that there will be any bar to proceed under Article 226 of the Constitution. Right of life is one of the basic human rights guaranteed under Article 21 of the Constitution. In **U.P.State Co-operative Land Development Bank Ltd. v. Chandra Bhan Dubey** where one of us (Wadhwa, J.) was a party, this Court after examining various decisions of the courts on the power of the High Court under Article 226 of the Constitution, observed that the language of Article 226 of the Constitution does not admit of any limitation on the powers of the High Court for the exercise of jurisdiction thereunder though by various decisions of this Court with varying and divergent views. It has been held that jurisdiction under Article 226 can be exercised only when a body or authority, the decision of which is complained, was exercising its power in the discharge of public duty and that writ is a public law remedy.

Yet again, it was observed that:

Since disputed questions of facts arose in the present appeals, the High Court should not have entertained writ petitions under Article 226 of the Constitution and then referred the matter to arbitration in violation of the provisions of the new Act. There was no arbitration agreement within the meaning of Section 7 of the new Act. Under the new Act award can be enforced as if it is a decree of a court and yet the High Court passed a decree in terms of the award which is not warranted by the provisions of the new Act. Appellant had also raised plea of bar limitation as in many cases if suits had been filed those would have been dismissed as having been filed beyond the period of limitation. In our opinion, exercise of jurisdiction by the High Court in entertaining the petitions was not proper and High Court in any case could not have proceeded to have the matter adjudicated by an arbitrator in violation of the provisions of the new Act. Mr.Mohan also contended that the appellant did not consent to adjudication of subject disputes by an arbitrator. That the matter was referred to the arbitrator without the consent of the appellant as now being alleged cannot be taken note of as the High Court specifically said that it was by consent of the parties that the reference was being made to the arbitrator.

In view of the same, petitioners cannot be granted any relief in this petition. It shall, however, be open to petitioners to seek *exgratia* under any scheme that is in vogue. As and when petitioners approach, the respondents or their successors shall consider grant of *exgratia*.

With the above observations, the Writ Petition is dismissed.

(V.V.S.RAO, J)

23.6.2004

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1.The Chairman,

A.P.Transmission Corpn. Ltd., Vidyut Soudha,

Somajiguda, Hyderabad.

2.The Superintending Engineer,

A.P.Transmission Corpn. Ltd., Nalgonda

3.The Divisional Electrical Engineer,

A.P.Transmission Corpn. Ltd.,

Suryapet, Nalgonda District.

4.The Assistant Engineer,

A.P.Transmission Corpn. Ltd.,

Suryapet, Nalgonda District.

5.2 CCs to Standing Counsel for A.P.Transmission Corpn. Ltd.

6.2CD copies

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